



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

December 4, 1997

Ms. Joni M. Vollman
Assistant General Counsel
Office of the District Attorney
District Attorney's Building
201 Fannin, Suite 200
Houston, Texas 77002-1901

OR97-2637

Dear Ms. Vollman:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 111667.

The Harris County District Attorney's Office (the "district attorney") received a request for all files, records, and any other documents pertaining to Cause Nos. 9429637, 9429638, 9429639, 9429635, and 9429636. You state that "certain documents will be disclosed to the requestor." You claim, however, that the remaining requested information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the information submitted.

Section 552.108 of the Government Code provides in part:

(a) [i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from [public disclosure] if . . . (3) it is information that: (A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation; or (B) reflects the mental impressions or legal reasoning of an attorney representing the state.

You specifically quote the pertinent language from the provision cited above in arguing that the records in Exhibit "A" constitute the "work product" of the prosecutors for the district attorney. We have reviewed the documents in Exhibit "A." We find that these records deal with the prosecution of crime and reflect the mental impressions or legal reasoning of an attorney representing the state. See Gov't Code § 552.108(a)(3)(B). You may, therefore, withhold from disclosure the documents contained in Exhibit "A" under section 552.108.

Section 552.101 excepts from required public disclosure information that is considered confidential by law, either constitutional, statutory, or by judicial decision. You claim that the records submitted in Exhibit "B" are made confidential by state and federal law. Criminal history record information ("CHRI") that is generated by the Texas Crime Information Center ("TCIC") or the National Crime Information Center ("NCIC") must not be publicly released. Title 28, Part 20 of the Code of Federal Regulations governs the release of CHRI which states obtain from the federal government or other states. Open Records Decision No. 565 (1990). The federal regulations allow each state to follow its individual law with respect to CHRI it generates. *Id.* Section 411.083 of the Government Code deems confidential CHRI that the Department of Public Safety (the "DPS") maintains, except that the DPS may disseminate such records as provided in chapter 411, subchapter F of the Government Code. *See also* Gov't Code § 411.087 (entities authorized to obtain information from DPS are authorized to obtain similar information from any other criminal justice agency; restrictions on disclosure of CHRI obtained from DPS also apply to CHRI obtained from other criminal justice agencies). Sections 411.083(b)(1) and 411.089(a) authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release the information except to another criminal justice agency for a criminal justice purpose, *id.* § 411.089(b)(1). Other entities specified in chapter 411 of the Government Code are entitled to obtain CHRI from DPS or another criminal justice agency; however, those entities may not release the information except as provided by chapter 411. *See generally id.* §§ 411.090-.127. Thus, any CHRI generated by the federal government or another state may not be made available to the requestor except in accordance with federal regulations. *See* Open Records Decision No. 565 (1990). Furthermore, any criminal history record information obtained from DPS or any other criminal justice agency must be withheld under section 552.101 of the Government Code in conjunction with Government Code chapter 411, subchapter F. Please note, however, that driving record information is not confidential under chapter 411, *see* Gov't Code § 411.082(2)(B), and must be disclosed.

You also assert that Exhibits "C" and "D" contain documents that are confidential pursuant to section 18(a) of article 42.18 of the Code of Criminal Procedure. Section 18(a) provides:

Except as provided by Subsection (b), all information, including victim protest letters or other correspondence, victim impact statements, lists of inmates eligible for release on parole, and arrest records of inmates, obtained and maintained in connection with inmates of the institutional division subject to parole, release to mandatory supervision, or executive clemency, or individuals who may be on mandatory supervision or parole and under the supervision of the pardons and paroles division, or persons directly identified in any plan of release for a prisoner, is confidential and privileged.

It is not apparent that any of the submitted information was obtained and maintained pursuant to the provisions of section 18(a). This provision accords confidentiality to the

records of the Texas Board of Criminal Justice. *See* Open Records Decision Nos. 190 (1978) at 2 (provision makes confidential files of Board of Pardons and Paroles) (construing predecessor statute), 33 (1974). Section 18(a) does not make records in the custody of the district attorney confidential. We therefore conclude that the district attorney may not withhold the information submitted as Exhibits "C" and "D" based on section 552.101 in conjunction with section 18(a) of article 42.18 of the Code of Criminal Procedure.

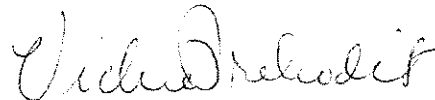
Finally, you assert that section 9(j) of article 42.12 of the Code of Criminal Procedure makes confidential the documents in Exhibit "E." Section 9(j) provides, in pertinent part:

A report and all information obtained in connection with a presentence investigation or postsentence report are confidential and may be released only to those persons and under those circumstances authorized under Subsections (d), (e), (f), (h), (k), and (l) of this section and as directed by the judge for the effective supervision of the defendant.

It does not appear that any of the exceptions to release of the documents contained in Exhibit "E" are applicable in this instance. We therefore conclude that the district attorney must withhold from disclosure the records submitted in Exhibit "E."

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied on as a previous determination regarding any other records. If you have any questions regarding this ruling, please contact our office.

Yours very truly,



Vickie Prehoditch
Assistant Attorney General
Open Records Division

VDP/glg

Ref.: ID# 111667

Enclosures: Submitted documents

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(w/o enclosures)